Government offers Government's Exhibits 280 for identification through 289 for identification.

Mr. Fennolly: No objection.

The Court: They may be marked.

(Marked Government's Exhibits 280 through 289 for identification.)

Mr. MacMahon: Your Honor, may I briefly summarize this correspondence to the jury?

The Court: Yes.

Mr. MacMahon: Your Honor, may we have leave to substitute photostats for Exhibits 281 through 289, (1231) excluding 283-A, when counsel has—

The Court: Yes, you may. 283-A is a check.

Mr. MacMahon: That is right, sir.

Ladies and gentlemen, this is a letter dated November 8, 1947, prepared in the office of George Wolf, signed by George Wolf, addressed to Mr. Frank Erickson, enclosing and transmitting a check for a thousand dollars as interest at 4 per cent for one year on a note due November 9, 1947, and requests a return receipt.

This is a letter dated June 30, 1948, prepared in the office of George Wolf and signed by Frank Costello, enclosing a check for $10,000 to reduce the loan of $25,000 on the note dated November 9, 1946. It again asks for the receipt.

This is a letter dated August 30, 1948, prepared in Mr. Wolf's office and signed by Frank Costello, enclosing a thousand dollar check covering one year's interest at 4 per cent on the $25,000 note dated September 23, 1947, again asking for a receipt.

This is a letter dated November 4, 1948, prepared by Mr. Wolf, signed by Frank Costello, addressed to Frank Erickson, enclosing a check for $856.63 representing one year's interest on the note dated November 9, 1946, $641.69 of which is interest on the $25,000 from November 9, 1947, to June 30, 1948, when 10,000 was paid on account (1232) and $214.94 interest on the balance of $15,000 from June 30, 1948 to November 9, 1948, and it again requests a receipt.

This is a letter dated December 22, 1948 addressed to Frank Erickson, prepared and signed by George Wolf, in which he states that he understands that Frank, referring to Frank Costello, gave you a check for 10,000 for further reduction of note dated November 9, 1946, and he again asks for a receipt.

This is a letter dated September 13, 1949, prepared in Mr. Wolf's office, signed by Frank Costello, and addressed to Frank Erickson, enclosing a check for a thousand dollars one year's interest at 4 per cent on the $25,000 note dated September 23, 1947, and again requesting a receipt.

This is a letter dated November 8, 1949, again prepared in Mr. Wolf's office, signed by Frank Costello and Mr. Frank Erickson, enclosing a check for $247.12 representing interest on the note dated November 9, 1946, and it states that there is a balance due of 5000, 10,000 having been paid on December 22, 1948. Again it asks for a receipt.

Q. Mr. Wolf, I refer you to that part of Government's Exhibit 86 for identification which has been previously identified as a deposit ticket on your account dated (1233) July 17, 1947. A. Yes.

Q. Did you make a deposit on that day? A. Yes.

Q. What was the amount? A. $10,000.

Q. Will you keep your voice up, please, Mr. Wolf, so the last juror can hear you? What was the amount, sir? A. $10,000.

The Court: You didn't do much better on the voice, though, Mr. Wolf. A little louder.

The Witness: $10,000.

The Court: That's fine. Thank you.

Q. From whom did you receive that money? A. Mr. Costello.

The Court: Oh, please, get it out loud.

The Witness: I am sorry. The proximity of Mr. MacMahon tends to—

The Court: I know you are not trying to be disobedient, but I ask you, please, to talk louder so the last juror in the box can hear you.

The Witness: From Mr. Costello.

Q. In what form did you receive that money? A. Cash.

Q. On the day of the deposit? A. Yes.

Q. I refer you to Government's Exhibit 86 for identification, the part which has previously been identified (1234) as a deposit ticket on your account dated July 21, 1947. Did you make a deposit on that day? A. I did.

Q. And in what amount? A. $8000.

Q. From whom did you receive that money? A. Mr. Costello.

Q. In what form? A. Cash.

Q. I refer you to that part of Government's Exhibit 86 for identification, previously identified as a deposit ticket on your account, dated August 5, 1947. Did you make a deposit on that day? A. I did.

Q. What amount? A. $4000.

Q. From whom did you receive that money? A. Mr. Costello.

Q. In what form? A. Cash.

Q. Mr. Wolf, those deposits total $22,000? A. That is right.

Mr. MacMahon: Mark these, please, as one exhibit.

(Marked Government's Exhibit 290 for identification.)

Q. Mr. Wolf, I show you Government's Exhibit 290 for identification, consisting of four checks. A. Yes.

Q. Do those checks bear your signature? A. Yes.

(1235) Q. And they total 22,000? A. Right.

Q. And they were made July 17, 1947— A. For $10,000; July 21, 1947, for $6666.67; August 5, 1947, for $3333.33; and August 14, I think it is, 1947, for $2000.

Q. And to whom were these checks payable, Mr. Wolf? A. The first check, July 17, No. 204, on my special account, was payable to Consolidated Television Corporation. That was $10,000.

Second check, No. 208, July 21, '47, for $6666.67, Consolidated Television Corporation.

Third, No. 230, August 5, 1947, for $3333.33, to Consolidated Television Corporation.

And the fourth, August 14, No. 248, for $2000, to the Consolidated Television Distributing Corporation.

Q. Mr. Wolf, were these checks which you have just identified, Government's Exhibit 290, used to purchase stock in the payee companies in your name? A. That is right.

Q. Mr. Wolf, I refer you to that part of Government's Exhibit 86 for identification previously identified as a de-

posit ticket on your account, dated October 6, 1947, in the amount of $11,000, ignoring for the moment the other hundred dollars deposited there. Did you make that $11,000 deposit? (1236) A. Yes, I made that $11,000 deposit.

Q. Where did you get that money? A. From the Consolidated Television Corporation to the amount of $10,000, and the thousand dollars from the Consolidated Distributing Corporation.

Q. And did that represent a return of half of the original $22,000 investment in those companies? A. That is right.

Q. I refer you to Government's Exhibit 86 for identification, that part previously identified as a deposit ticket on your account, dated November 24, 1947. Did you make a deposit on that day? A. I did.

Q. In what amount? A. $5000.

Q. From whom did you receive that money? A. From Mr. Costello.

Q. In what form? A. Cash.

Q. What did you do with that money? A. That money was paid to either the Consolidated Television Corporation or to the Distributing Corporation, but you have my check. I wish you would let me see it, please.

Mr. Fennelly: May the witness see the check he requested?

The Court: Mr. MacMahon seems to be looking at papers that appear to be checks, and I assume that one of (1237) them is the one that the witness is asking for.

Mr. MacMahon: Just a moment until I mark it, your Honor.

(Marked Government's Exhibit 291 for identification.)

Mr. MacMahon: Mark this one.

(Marked Government's Exhibit 292 for identification.)

Q. Mr. Wolf, I show you a check, marked Government's Exhibit 292 for identification. Is that check—it is dated October 17, 1947? A. Yes.

Q. And is it signed by you? A. It is.

Q. On your special account? A. On my account.

Q. To whom is it payable? A. Cash.

Q. Is that a check for cash representing the $11,000 you received from Consolidated Television deposited in your account? A. Represents a half of the—return of half of the original investment, $11,000.

Q. Did you cash that check, Mr. Wolf? A. I cashed it.

Q. What did you do with the money? A. I gave it to Mrs. Costello.

Q. Who told you to do that? A. Mr. Costello.

Q. Mr. Wolf, I show you Government's Exhibit 291 for identification, which is a check dated November 25, 1947, (1238) in the amount of $5000. Is that signed by you? A. Yes. That is the check of the $5000, and I see that was made payable to Consolidated Television Distributing Corporation.

Q. And that check was a loan of $5000 to Consolidated Television? A. It was considered as an advance.

Q. And from whom did you receive the money? A. Mr. Costello.

Q. That makes a total then as of that date of $16,000 in Consolidated Television, is that right? A. That is right, and Distributing Corporation.

Q. And you held that investment in your name beyond December 31, 1949? A. The investment of $11,000 and the loan of $5000 was held in my name.

Q. Beyond December 31, 1949? A. Beyond December 31, 1949.

Mr. MacMahon: Your Honor, I offer at this time Government's Exhibits 86 for identification, 290, 291 and 292.

The Court: Very well.

(A pause.)

Mr. Fennelly: No objection.

The Court: They may be marked.

(Marked Government's Exhibits 290, 291, 292 and 86.)

(1239) Q. Mr. Wolf, I show you Government's Exhibit 256 in evidence, which is a deed for some lots in Hollywood, Florida, from Edwin Noulin and his wife to Dudley and Anne Geigerman.

The Court: Are they in evidence?

Mr. MacMahon: Yes, your Honor.

The Court: Identify them by exhibit numbers, please.

Mr. MacMahon: I did.

The Court: Did you? I am sorry. What is the exhibit number, then? I just want to look at it.

Mr. MacMahon: 256, your Honor.

The Court: 256, thank you.

Q. (Continuing) Did you represent the purchaser in the transaction represented by that deed, Mr. Wolf? A. Not directly. That transaction was handled by a Florida lawyer, a Mr. Beckerman. I don't recall his first name.

Q. Was it Stanley Beckerman? A. Stanley Beckerman.

Q. Did you retain him, Mr. Wolf? A. No, no. The matter was referred to Mr. Beckerman by someone else in Florida, and Mr. Beckerman communicated with me and told me that the matter had been turned over to him.

Q. Who was your client in this transaction? (1240) A. Mrs. Costello consulted me about it.

Q. Did you represent the Geigermans? A. No, except through Mrs. Costello. My only contact in the transaction was Mrs. Costello.

Q. Was Mrs. Costello the real purchaser of those lots? A. She was the purchaser of those lots, so I understood.

Q. Did you disclose that fact to Mr. Beckerman at the time? A. No, the property was originally bought—

Q. No, that is all, Mr. Wolf. When did you first represent Mr. Frank Costello? A. The fall of 1943.

(Marked Government's Exhibit 293 for identification.)

Q. Mr. Wolf, I show you Government's Exhibit 293 for identification. It is a check dated October 1, 1943, signed by you, is that right? A. That is right.

The Court: What is the date?

Mr. MacMahon: October 1, 1943, your Honor.

The Court: Very well.

Q. In the amount of $5000? A. That is right.

Q. And payable to A. A. Mayper as administrator of the estate of Arnold Rothstein, is that right? A. That is right.

Q. And endorsed by Mr. Mayper as such administrator? A. I presume it was.

(1241). Q. It appears so on the check, does it not? A. Yes, his endorsement appears there.

Q. Did you make a $5000 deposit in your account— A. Yes.

Q. —prior to this check? A. Yes.

Q. From whom did you receive that money? A. Mr. Costello.

Q. In what form? A. Cash.

Q. And this check was in payment of a judgment, Mr. Wolf? A. In settlement of a judgment.

Q. And that judgment had been entered prior to October 18, 1937, is that right? A. Yes.

The Court: What was the amount?

Mr. MacMahon: $5000, your Honor.

(Marked Government's Exhibit 294 for identification.)

Q. Mr. Wolf, I show you Government's Exhibit 294 for identification, which is a check dated October 27, 1943, in the amount of $1000, signed by you, is that right? A. That is right.

Q. And this check is payable to Fertig— A. Walter & Gottesman, attorneys for Columbia Casualty Company.

Q. And did you receive money which you deposited in your account prior to this check? A. I received a (1242) thousand dollars in cash from Mr. Costello which I deposited in my account and issued this check for it and took that—issued this check to these attorneys.

Q. And was this also in settlement of a judgment? A. Yes, yes.

Q. And do you recall what type of judgment that was, what the judgment was for?

Mr. Fennelly: I object to it as immaterial.

The Court: I think that is immaterial, isn't it, unless it has some bearing.

Mr. MacMahon: Your Honor, it does have bearing on whether—the date of the check is '43, that is after 1937, and the obligation, your Honor—

The Court: Ask him when the obligation was incurred. What was the date of the judgment?

Q. What was the date of the judgment, Mr. Wolf, if you recall? A. No.

The Court: Did it antedate October 27, 1943?

The Witness: Oh, yes, it was long before.

The Court: How long, if you know?

The Witness: I do not know. But I know—

(To Mr. MacMahon) You have the date. We went over that in your office.

Q. I am not sure we have the date. A. That would refresh my recollection.

(1243) Mr. MacMahon: We have nothing to refresh his recollection.

The Court: Very well.

Q. Your recollection was it did antedate October 1937? A. Oh, '37. I am sorry. I didn't quite get it. I am wrong about my recollection there. I don't know whether it antedated '37 or not.

The Court: I hadn't asked him whether it antedated 1937; I asked him whether it antedated 1943.

The Witness: That is what I thought.

The Court: You were right about that.

The Witness: Yes.

The Court: Now you say you don't recall whether it was before October '37 or sometime subsequent?

The Witness: No.

Mr. MacMahon: Your Honor, I submit, under these circumstances, the nature of the judgment is material.

The Court: Well, on that representation I shall allow you to ask it.

Q. Just in a general way, Mr. Wolf, what was that judgment for?

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Well, maybe it will turn out that you are right. But the United States Attorney represents (1244) that it is material and relevant, and I am not a clairvoyant or anything like that.

Q. Was it for a bond, Mr. Wolf? A. My recollection is that it was for a bond.

Q. Mr. Wolf, I show you Government's Exhibit 87 for identification, that part previously identified as a deposit ticket on your account dated October 27, 1943. Did you make a deposit on that day? A. Yes, of a thousand dollars in cash that I got from Mr. Costello, and it went in payment of that—it was upon that that I issued the preceding check of a thousand dollars.

Mr. MacMahon: Would you mark this?

(Marked Government's Exhibit 295 for identification.)

Q. Mr. Wolf, I show you Government's Exhibit 295 for identification and ask you whether you recall payment of money for Frank Costello in connection with the settlement of the judgment referred to in Government's Exhibit 295? A. Is that reference to the thousand dollars?

Q. No, sir. A. 295? Yes.

The Court: Pardon me. Let me see the exhibit.

A. I am confused. Yes. I thought it had reference to the other check.

Q. Do you recall payment— A. Yes.

(1245) Q. —of money of that? A. Yes, I recall— I haven't the date. You have it, Mr. MacMahon?

Q. In November of 1943 did you pay the amount of $482.95? A. That is right.

Q. To the attorney for West End Avenue Corporation? A. That is right. Philip Levitt, I think his name was.

Q. And that was an action for rent? A. I don't recall what it was.

Mr. Fennelly: I object to it as immaterial and irrelevant.

The Court: Overruled.

Q. Mr. Wolf, in February 1947 did you receive money and did your office receipt for certain money—

The Court: What is the date?

Mr. MacMahon: February 1947.

The Court: 1947.

Q. —to the Property Clerk of the City of New York? A. Yes.

Q. Do you recall the total amount which your office received? A. Yes.

Q. Will you state what that was, please? A. Total amount was $27,200.

Q. And of that amount $24,886.90 was paid to the Collector of Internal Revenue, is that correct? A. No. (1246) $24,286.90.

Q. To the Collector of Internal Revenue? A. To the United States Attorney's office who in turn turned it over, I presume, to the Collector of Internal Revenue.

Q. And to the Property Clerk $166.45 for costs and disbursements, is that right? A. That is right. And the balance of $2746.65 was turned over to me, deposited by me in my special account on February 20, 1947.

Q. Did you deduct a fee from that amount? A. No. There were some disbursements of $399.10 for costs of transcript of minutes and other disbursements which were deducted, and the balance of $2347.55 in the form of my check, dated February 28, 1947, was given to Mr. Costello, payable to his order.

(Marked Government's Exhibit 296 for identification.)

Q. I show you Government's Exhibit 296 for identification and ask you if that is the check to which you just referred? A. Yes, that is my check, dated February 28, 1947. Yes.

Q. Payable to Frank Costello? A. That is right.

Q. In the amount of $2347.55? A. That is right.

Q. And endorsed by Frank Costello? A. That is his endorsement.

(1247) (Marked Government's Exhibits 297 and 297-A for identification.)

Q. Mr. Wolf, I show you Government's Exhibit 297 for identification, which is a check dated November 20, 1948,

in the amount of—January 20, 1948, in the amount of $775 signed by you, is that right? A. That is right. That check was given to an attorney—

The Court: Keep your voice up a little.

A. That check was given to an attorney in settlement of a case.

Q. In settlement of a case against Frank Costello? A. That is right.

Q. And did you receive that money from Costello? A. I did, in cash, and deposited it in my special account, and issued this check for it.

Q. And that was in payment of a case, or settlement of the Meteor Holding Company against Costello, is that right? A. Yes, that is right.

Q. And what was the nature of that judgment?

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Let me see it.

Mr. MacMahon: That is 48, your Honor.

The Court: I will allow it.

(1248) Q. Was that for a rent action? A. I think it was.

Mr. MacMahon: Your Honor, at this time the Government offers Government's Exhibit 87 for identification and Government's Exhibits 293 through 297.

The Court: Mr. Fennelly, I am quite sure you won't be able to get through with those by one o'clock which is only two minutes away, so we will take the recess now for lunch.

Ladies and gentlemen, remember the instructions I have been giving to you, don't talk about the case among yourselves or with anybody else. 2.15.

(Recess to 2.15 p.m.)

(1249) AFTERNOON SESSION

(Jury present.)

GEORGE WOLF, resumed.

Direct Examination by Mr. MacMahon (Continued):

Q. Mr. Wolf, would you state what fees you received from Frank Costello from the time you first represented him in 1943 through December 31, 1949?

The Witness: I presume, your Honor, that no objection is raised by—

Mr. MacMahon: There hasn't been any objection.

The Witness: I say, there is no question of privilege?

Mr. Fennelly: There is no objection of privity raised as to your fees, Mr. Wolf.

Mr. MacMahon: I am sorry, your Honor. There was a matter, an offer pending, Mr. Fennelly, at noon.

Mr. Fennelly: Of this group, the only ones I object to are Exhibits 295 and 297-A for identification on the ground that they are irrelevant and immaterial.

The Court: And those are those docket cards?

Mr. Fennelly: Docket cards.

The Court: I don't know what they add, Mr. MacMahon, because the testimony is already in from the witness as to what was the purpose of the payments, and there is material on those cards which I think has no (1250) relevance whatever here.

Mr. MacMahon: I will withdraw the offer.

The Court: I think that is better. So 295 and 297 for identification, those items are withdrawn.

Mr. Fennelly: 297-A, that is.

The Court: 297-A, yes.

(Marked Government's Exhibits 87, 293, 294, 296, 297.)

Q. (Continuing) Proceed, Mr. Wolf. A. In addition to the half-commission which I received on the 79 Wall Street transaction of $2800, which did not come from Mr. Costello, it came from the seller, I received the following fees on the following dates:

October 14, '43, a thousand dollars.
October 15, '43, a thousand dollars.
June 26, '44, a thousand dollars.
September 21, '44, $500.
October—

The Court: Pardon me just a minute, Mr. Wolf. That last date was what?

The Witness: September 21, 1944, $500.

The Court: Yes.

A. (Continuing) October 10, 1944, $2000.

May 22, 1945, $1500.
September 11, 1945, $500.

December 27, 1945, $400.
November 12, 1947, $825.
(1251) August 21, 1948, $2500.
November 3, 1949, $1000.
December 23, 1949, $1000.

Q. Were those all in cash, Mr. Wolf? A. Cash, to the best of my recollection.

Q. Mr. Wolf, did you remain as treasurer of 79 Wall Street Corporation from its organization in 1944 until its dissolution in 1950? A. I am quite sure I did. You have the minute book I gave you.

Q. Was Frank Costello an officer of 79 Wall Street? A. He was the president.

Q. Who managed the property at 79 Wall Street? A. The property was managed by a management firm, Josephine Strauss, and later succeeded by the firm of Friedman & Strauss.

Q. Mr. Wolf, I show you Government's Exhibit 4 in evidence, which is the 1946 income tax return of Frank Costello, and I ask you if the salary for Costello that year from 79 Wall Street was stated to be $7484.85? A. That is correct.

Q. I refer you to the schedule of charitable contributions. A. Yes.

Q. And I ask you if those total $6338.50? A. That is right.

(1252) Q. And those contributions were from Frank Costello's salary from 79 Wall Street? A. All of those contributions were charged to his salary at 79 Wall Street.

Q. They were all deducted by him on his income tax? A. These were deducted by him and there is a schedule here annexed to the income tax return. They total $6338.50.

Q. Did that include, Mr. Wolf, two payments to Costello, one for $500 and one for $600 which were reimbursements

by the corporation to Costello for contributions he had made? A. If you will hold that a moment.

Q. Just a moment, I'll give you the check.

(Marked Government's Exhibit 298 for identification.)

A. I have it. Yes.

Q. I show you Government's Exhibit 298 for identification, which are two checks, one dated July 8, 1946 for $600, payable to Frank Costello, from 79 Wall Street Corporation, signed by you; is that correct, sir? A. That is right.

Q. Another one, September 4, 1946, for $500, payable by 79 Wall Street Corporation to Frank Costello, and signed by you, is that correct? A. Yes.

Q. And these checks represent contributions which (1253) Costello had made and received reimbursement from 79 Wall Street Corporation, is that right? A. Yes. The $600 check represented a contribution—

Q. No, I didn't ask you that, Mr. Wolf. They do represent contributions he had made and was reimbursed by the corporation? A. Yes, for the amounts stated in the checks.

Q. And those are included in the $6338.50 item deducted by him on his federal income tax return? A. That is right.

Q. Was the balance of his salary for that year withheld as Social Security and withholding tax? A. Withholding, that is right.

Q. So that he received none of the $7484.85 directly, is that right? A. All his salary went to charitable contributions.

The Court: That was 1944, was it?

The Witness: 1946.

The Court: 1946.

Q. Mr. Wolf, would you remove the slips from those checks, please? A. (Witness complies.)

Q. Mr. Wolf, I refer you to Government's Exhibit 3 in evidence, which is the income tax return of Frank and Loretta Costello for the calendar year 1947, and I ask you (1254) what salary is shown there for Frank Costello from 79 Wall Street Corporation? A. $6555.68.

Q. Now I refer you to the schedule on that return of charitable contributions, and is the total amount $2739? A. $2739 charitable contributions.

Q. And those were all deducted by Mr. Costello, is that right? A. These are his schedule of contributions—

Q. Were they deducted, Mr. Wolf? A. These are his schedule of charitable contributions in his income tax return.

Mr. MacMahon: I move to strike the answer, your Honor, as not responsive.

The Court: Oh, I will allow it. They are. But the question is, were they deducted?

The Witness: They were deducted in his income tax return.

The Court: All right. They were.

Q. Did that include $100 reimbursement by the corporation to Frank Costello for a contribution previously made by him during that year? A. There were two hundred dollar contributions that that did not include.

Q. I ask you, what it did include? A. You asked me about a hundred dollar contribution; I said there were two one hundred dollar contributions. I will tell you what it (1255) did not include if you ask me.

Mr. MacMahon: Mr. Reporter, will you please read the question.

(Question read.)

A. There were two such contributions.

The Clerk: Government's Exhibit 299 for identification.

The Court: Is the answer "Yes," then?

The Witness: Yes. It includes at least one—

Q. Mr. Wolf, I show you Government's Exhibit 299 for identification. A. Yes.

Q. And I ask you if this is a check from 70 Wall Street Corporation signed by you payable to Frank Costello for $100 dated April 26, 1947? A. Yes.

Q. And that is a reimbursement to Costello, is that right? A. To him for a contribution which he made.

Q. Would you remove the slip from that, please, Mr. Wolf? A. (Witness complies.)

(Marked Government's Exhibit 300 for identification.)

Q. Mr. Wolf, I show you Government's Exhibit 300 for identification and ask you if this is a check on 79 Wall Street Corporation signed by you dated August 14, 1947, payable to Frank Costello for $100? A. That is right.

(1256) Q. And does that check represent a reimbursement to Costello for money he had given to— A. Another—

Q. —another person? A. For another contribution.

Q. Was it given to another person? A. No, it was given to the Play School Association.

Q. Mr. Wolf, I show you Government's Exhibit 299 which you previously have identified. Is that the reimbursement to Costello for money he gave to Eleanor France? A. To an individual charity.

(Marked Government's Exhibit 301 for identification.)

Q. Mr. Wolf, I show you Government's Exhibit 283-A in evidence. It is a check for $1000 payable to the order of Frank Erickson, signed by you on 79 Wall Street Corporation, dated November 8, 1947. Was that check also charged to Costello's 1947 salary? A. It was.

Q. I show you two checks marked for identification as Government's Exhibit 103, the first one dated November 6, 1947, in the amount of $1247.10, and the second dated December 1, 1947, in the amount of $424.70, both signed by you for 79 Wall Street Corporation, and both payable to the order of Frank Costello, and I ask you if those checks were paid directly to Frank Costello? A. Yes.

(1257) Q. Now, was the balance of his salary for the year 1947 from 79 Wall Street Corporation withheld as taxes and Social Security? A. That is right.

Q. Mr. Wolf, I am informed I still haven't these two checks straightened out. 299 for identification, which is a check in the amount of $100, Eleanor France, is a reimbursement for a contribution not deducted on the income tax return, is that right? A. It was a non-deductible contribution.

Q. Right. And 300 was a reimbursement and deducted? A. That was a deductible contribution, and deducted.

Mr. MacMahon: Mark these checks.

(Marked Government's Exhibit 302 for identification.)

The Court: Is that one or more than one?

Mr. MacMahon: 12 checks, your Honor.

Q. Mr. Wolf, I refer you to Government's Exhibit 2 in evidence, which is the 1948 individual income tax return of Frank and Loretta B. Costello, and I ask you what was the total salary paid to Frank Costello in that year from 79 Wall Street? A. $6000.

Q. I show you Government's Exhibit 302 for identification which consists of a series of 12 checks (1258) all dated in the year 1948. A. Yes.

Q. And totalling $5254.80—

The Court: What is that figure?

Mr. McMahon: $5254.80.

Q. —and ask you if those were all paid to Frank Costello in the year 1948? A. These are the salary checks less the Social Security and withholding deductions.

Q. And the balance of the salary was held as Social Security and withholding taxes? A. That is right.

Mr. MacMahon: Your Honor, I misread that figure. It is $5192, the total of the 12 checks.

Mr. Fennelly: And 192?

Mr. MacMahon: 192.

(Marked Government's Exhibit 303 for identification.)

Q. Mr. Wolf, I show you Government's Exhibit 1 in evidence, which is the 1949 individual income tax return of Frank and Loretta B. Costello, and I ask you what salary is shown to Frank Costello during that year from 79 Wall Street Corporation. A. $6000.

Q. And I show you Government's Exhibit 303 for identification and ask you if those 12 checks made in the year 1949 and payable to Frank Costello represented payment

of his salary during that year from 79 Wall Street Corporation? A. They do.

(1259) Q. Those total $5254.80? A. I presume so, the figures there.

Q. Was the balance of his salary for that year withheld as Social Security taxes and withholding taxes? A. Yes.

Q. Mr. Wolf, would you remove the slip from Government's Exhibit 300 for identification? A. Will you remove your slip, please?

Q. That is the clerk's slip, Mr. Wolf. A. Oh.

Q. May I have it, sir? A. (Witness hands to Mr. MacMahon.)

Mr. MacMahon: At this time the Government offers Exhibits 299 through 303 for identification.

The Court: Has 298 been offered?

Mr. MacMahon: 298 I offer too, your Honor.

Mr. Fennelly: No objection.

(Marked Government's Exhibits 298 through 303.)

Q. Mr. Wolf, did Frank Costello receive any payments by check from 79 Wall Street Corporation in 1944 or 1945? A. You mean in direct payment?

Q. Yes. A. I don't think so other than, I think, we mentioned, the payment of $500 that was returned to him on the—

Q. Repayment? A. —on the Strauss loan. Other than (1260) that, I don't think so.

Q. Was his total salary for those years either withheld or paid out as charitable contributions? A. Yes.

Q. 1944 and 1945? A. Yes.

Q. And all the contributions were deducted by him on his income tax returns, is that right? A. Yes.

Q. For those years. Were they charged to his salary account? A. That is right.

Q. Were the contributions which were charged to Costello's salary account with 79 Wall Street Corporation from 1944 through 1947 made out in your office and signed by you? A. Yes, all signed by me as treasurer.

Q. Mr. Wolf, I show you Government's Exhibits 82 in evidence, 89 in evidence and 105 in evidence, and I ask you if those are signature cards opening certain bank accounts? A. Yes.

Q. The first one is dated May 8, 1947, is that correct? A. I know the first—

Q. The earliest. A. I know the first was dated May 8, 1947.

Q. Did you arrange for the opening of those three charity bank accounts for Frank Costello? A. Yes.

Q. And did you make all the deposits in those accounts? (1261) A. Yes.

Q. And where did you receive the money that you deposited? A. From Mr. Costello.

Q. Did you receive all the statements and cancelled checks back from the bank? A. Yes.

Q. Did you prepare all the checks drawn on the account in your office for Costello's signature? A. Yes.

Q. Mr. Wolf, I show you Government's Exhibit 84 in evidence, 91 in evidence and 107 in evidence.

The Court: 84, 91 and 107?

Mr. MacMahon: Right, sir.

Q. (Continuing) Which have previously been identified as deposit tickets on these three accounts? A. Yes.

Q. On this account. Was the total amount deposited by you in 1947—and the records show this, Mr. Wolf, to be

—$7250 in the year 1947? A. I have $7000 but I think there was an additional deposit of 250.

Q. 7250? A. So that would make it $7250. That is for the year 1947.

Q. No, 1947. A. '47.

The Court: Haven't moved that fast.

Q. Was all that money given to you by Frank Costello? A. Yes.

(1262) Q. Did that money belong to him or did it belong to others? A. It was money that he collected in charity drives.

Q. Would you answer the question, Mr. Wolf? A. It was money that he collected in charity drives.

The Court: Collected from others?

The Witness: From others in charity drives.

Q. Was any of it his money, Mr. Wolf? A. No.

Q. The balance in that account, as shown by Government's Exhibit 83 in evidence, as of the close of the year, on December 31, 1947, was $215. That balance was not Frank Costello's money, is that right? A. Which account are you talking of? I mean, would you refer to the account by name, please, so I will have them clear in my mind. You are talking—

Q. Continental Bank & Trust Company charity account. A. I don't think there was such an account in 1947. The account was Frank Costello special charity drives account. You are talking of 1947 account?

Q. I am talking of the 1947 account. A. That was a charity drives account exclusively, and the balance that you state—I cannot—

Q. That is, the record shows that to be the balance, Gov-

ernment's Exhibit 83? A. Then that must be the balance.

(1263) Q. That was not Frank Costello's money? A. No.

Q. Is all money belonging to others, is that right? A. Money collected from others.

Q. The total deposits in 1948 in the charity account at the Continental and Chemical Banks are shown to be $9500 by the bank records for the year 1948? A. That is right.

Q. From whom did you receive that money? A. Mr. Costello.

Q. Did he tell you what part of that belonged to others? A. Yes.

Q. Which he had collected? A. Yes.

Q. How much was that? A. Would you identify these accounts?

Q. Yes, the Continental and Chemical Banks. A. That was the Frank Costello special charity fund account. The other was discontinued. Charity drives account was discontinued. $4500 that was deposited was collected from others in charity drives. $5000 was his own personal contribution into that account.

Q. So the balance of $724.30 as of December 30, 1948, as shown by Government's Exhibit 90-C in evidence—

The Court: What is it?

Mr. MacMahon: $72.30, your Honor.

(1263a) Q. (Continuing) In the account at the Chemical Bank was Costello's own money, is that right? A. I don't know the amount, but I don't dispute those figures. That's probably right. That's probably right: I have made no computation of that figure. Those figures are probably right.

(1264) Q. All of the money on deposit in that account at the end of the year was Costello's money, is that right, Mr.

Wolf? A. I think so. I think all of the moneys collected had been disbursed for charity donations.

Q. Now, Mr. Wolf, the deposits as shown on Government's Exhibits 91 and 107 in evidence for the year 1949 in the Chemical and New York Trust accounts total $13,600. Did you receive that money from Frank Costello? A. I have 13,500, but I think there was an additional check that came after a drive had been closed. I did.

The Court: You received it from the defendant?
The Witness: From the defendant.

Q. Now, did he tell you how much of that money belonged to others which he had collected? A. Yes.

Q. How much was that? A. $7,500 was collected in charity drives from others. The balance he gave me out of his—

Q. Seventy-seven. A. Oh, yes. That is a hundred dollars. That made it seven—

Q. Seventy-six hundred was collected from others? A. That is right. And the balance of $6,000 he gave me at various times from his own personal funds.

Q. Now, the balance in that account at the New York (1265) Trust Company as of December 31, 1949 is shown by Government's Exhibit 106, the bank records, to be $916.73. Was that all Costello's money, that balance? A. Well, I can't tell. I think you have computed it. I can't tell. But I will take your computation.

Q. Was the balance in that— A. I don't know.

Q. —account at the end of the year all money belonging to Frank Costello? A. I don't know. I can tell you what was disbursed in charity drives. I have given you the list of charity disburse—

Q. I don't want your list of charities. A. I haven't computed this.

The Court: Let me ask you a question here.

At the time you drew checks in the form of contributions, did you attempt to make any allocation of those funds against the money that the defendant gave you and against the money that he gave you having collected it from others?

The Witness: There was some attempt but it wasn't an accurate—it wasn't done accurately. There was a certain attempt. There was certain charity—

The Court: From any record that you have, whether they are now accurate or not, are you able to answer the question, which is, was the $916 money belonging to the defendant or was any part of it money (1266) belonging to the defendant? Bear in mind I am asking you whether you can make an estimate on the basis of—

The Witness: Yes, it can be done.

The Court: I think that is what the prosecutor is asking you.

The Witness: That is right. I haven't got the computation. It could be very readily done.

The Court: But you haven't got that?

The Witness: I haven't got it. But it is a matter of a little bookkeeping of about five minutes of bookkeeping.

The Court: Your answer is now that as of now you can't tell us how the $916—

The Witness: No, I can't.

Q. Do you have records with you from which you can ascertain it? A. Yes.

Q. Would you please take pencil and paper and do it? A. I couldn't do it. I would need the assistance—I would say it would take about five or ten minutes of bookkeeping to figure this out.

The Court: The question that Mr. MacMahon asked you was have you records from which it could be done?

Q. Mr. Wolf, I show you a photostat of a schedule, schedule D, and I ask you if that shows a total of $9,595 drawn from that account— A. For the year.

(1267) Q. Contributions made by others, is that right? A. Yes.

Mr. Fennelly: May we have the figure, and the year, please?

Mr. MacMahon: 1949, $9,595.

Q. That $9,595 were contributions made out of moneys collected from others and deposited in this account, is that right? A. Yes. That's—quite sure of that.

Q. So that by the end of the year all the money collected from others had been disbursed from that account, is that correct? A. I should think so.

Q. And the balance of the withdrawals from that account were claimed by Costello as deductions on his individual income tax return for that year, is that correct? A. Yes, from his personal deposits.

Q. Now, Mr. Wolf, with respect to the withdrawals on the accounts in 1947, were those withdrawals for contributions on behalf of others and not on Costello's own account? A. All contributions from the charity fund drive account 1947 were made from collections from others. Is that your question?

Q. That is right. Now, in 1948 the $6,254 of withdrawals were, again, contributions made on behalf of others, is that right? A. Yes.

Q. And the balance of the withdrawals that year (1268) were made on behalf of Frank Costello and were all

claimed by him on his 1948 income tax return, is that right? A. That is right.

Q. So that, roughly, Mr. Wolf, about $20,000 of these contributions in Frank Costello's name were, in fact, made with money contributed by other people, is that right? A. Well, we have seven for 1947, forty-five for '48, and seventy-six for '49, whatever that totals.

Q. You are referring to Costello's money. I am talking about other people's money. A. No. Other people's money. Seventy-six in 1949; forty-five—

Q. 95 you said.

The Court: With respect to '49, Mr. MacMahon, the testimony, as I recall it, is that—

Mr. MacMahon: Ninety-five—

The Court: —he collected $7,600 from others and put in six thousand of his own.

The Witness: That is right.

Q. You referred to your schedule D, $9,559. A. Those were the contributions made.

Q. Made out? A. Yes.

Mr. Fennelly: Is this a private conversation, or may I come in?

(1269) The Court: I don't hear you.

Mr. Fennelly: I see they are having a private conversation up there. I would like to hear it.

The Court: It is all right, and you are not being harmed by it, I assure you.

Mr. Fennelly: Well, I always like to hear.

The Court: I am sure you do, and I don't blame you. But rather than have it repeated all over again, let us just start over again.

Q. Would you add up your figures, please, Mr. Wolf, on that?

The Court: Mr. Fennelly is anxious to hear what you say, Mr. Wolf.

The Witness: I will—

The Court: Between his request and mine maybe you will get loud enough so that we can hear you.

A. $19,100.

Q. Was money contributed by others, but in Frank Costello's name; is that right? A. Money that Mr. Costello collected from others—

Mr. Fennelly: Just a minute.

A. —and deposited into these accounts.

Mr. Fennelly: I object to it, I mean, the form of the question, stating facts not in evidence.

The Court: Well, it has been answered by the (1270) witness, and I will let it go.

Q. Mr. Wolf, I show you Government's Exhibits 1 through 5 in evidence, which are the income tax returns of the Costellos for the years 1949, '48, '47, '46, and the individual return of Mrs. Costello for '46.

Were these returns prepared in your office?

A. They were.

Q. Now, in the years 1946 through 1949, where did you obtain the information concerning Crescent Music Company, Louisiana Mint Company, Beverley Country Club? A. For Crescent Music Company, from statements supplied to Mrs. Costello by Mr. Murphy monthly and, I think, annual statements which Mrs. Costello brought into the office, from confirmations which my office made by com-

municating with Mr. Murphy as to the income that Mrs. Costello received from Crescent Music Company.

Q. Now, what about Louisiana Mint? A. Louisiana Mint, from monthly statements and annual reports and statements that Mr. Costello received from Mr. Murphy and which he brought in to us, and from confirmations from Mr. Murphy as to the income from Louisiana Mint as to Mr. Costello.

Q. What about Beverley Country Club? A. As to Beverley Country Club, the same thing is (1271) true as with the Louisiana Mint Company.

Q. Now, except for the year 1946, the income from Beverley is identified by the name of the company, is that not so, Mr. Wolf, from which it was received?

The Court: You mean, in the returns?

Mr. McMahon: Yes.

A. Except for '46?

Q. Yes. A. I assume that is so. I don't—

Q. Look (indicating). A. That is '46. Well, it is not referred to there (indicating).

Q. I notice an item— A. There is a miscellaneous item.

Q. —in the amount— A. I think of $8,229.25, referred to as Miscellaneous.

Q. Is that income from the Beverley Country Club? A. I am quite sure it was.

The Court: And that is the income tax return for—

The Witness: For 1946.

The Court: And that is Exhibit—

Mr. MacMahon: Exhibit 4, your Honor.

The Court: 4.

Q. Now, the traveling expense deductions claimed on Costello's returns for '44, '45 and '46, and the joint return for '47, who did you obtain the information from (1272) with respect to them? A. From Mr. Costello.

Q. Did he say that those traveling expenses were his? A. His.

Mr. Fennelly: I object. Just a minute. I object.

The Witness: I am sorry.

Mr. Fennelly: Privileged communication.

The Court: I beg your pardon?

Mr. Fennelly: I object to what he says, privileged communication.

The Court: Overruled.

Q. What did he say, Mr. Wolf? A. They were his.

Q. Did he tell you in what connection those business expenses were incurred? A. He did, but I don't remember.

Q. Was it—

Mr. Fennelly: I object.

Q. Was it in connection with—

Mr. Fennelly: I object to the line of questioning. The bill of particulars specifically says that there is no contention about deductions.

Mr. MacMahon: Your Honor, I do not do this for the purpose of challenging the items. I have another purpose, I represent to the Court at this time.

The Court: Overruled.

Q. Were those in connection with the Louisiana (1273) enterprises in which he was interested? A. Yes.

Q. And trips to New Orleans, is that right? A. Yes.

Q. Now, did he have any documents which he gave you to support those? A. He gave me no documents. He calculated what he said the expense was, and we took his figures; it was an estimate.

Q. The information concerning 79 Wall Street salary, was that obtained from the books of 79 Wall Street Corporation? A. Yes.

Q. Which were in your custody as treasurer? A. That is right.

Q. Mr. Wolf, I refer you to Government's Exhibit 3 in evidence, the 1947 return of Frank and Loretta Costello, and I direct your attention to an item of income, G. M. Levy, 149 Broadway, New York City, $30,000. From whom did you receive the information with respect to that item of income? A. Both Mr. Levy and Mr. Costello.

Q. What did Mr. Levy say with respect to the source of that income?

Mr. Fennelly: I object to it as immaterial, your Honor.

The Court: Overruled.

A. Mr. Levy stated that the $30,000 represented (1274) payments of $15,000 for 1946 and '47 to Mr. Costello for services that he rendered in connection with his endeavor to keep bookmakers away from Roosevelt Track—Raceway. Q. On the 1940— A. And to give you the full information, at the time Mr. Levy told me that he, in my presence, delivered a check of $30,000 to Mr. Costello.

Q. And as to the years 1948 and 1949, which are Government's Exhibits 2 and 1, respectively, an item of $15,000 in each return from G. M. Levy, from whom did you receive the information— A. In those two instances Mr. Costello informed me that he had received check for each year from Mr. Levy for the amount of $15,000.

Q. Mr. Wolf, I show you Government's Exhibit 1 in evidence, the 1949 income tax return of Frank and Loretta B. Costello, and I call your attention to a schedule on page 2, attached to page 2, and entitled "Frank and Loretta B. Costello losses on oil and gas leases 1949." From whom did you receive the information with respect to those leasehold investments? A. From several sources. From statements which Mr. Costello was receiving from operating company, from statements from the leasehold owners as to the interest (1275) and the amount due and paid by Mr. Costello with respect to his particular interest, and from books—or at least from information made available to us by an accountant for Mr. Erickson, who had an interest that was similar to Mr. Costello's interest.

Q. And from those books were you able to ascertain the cost of the investments in these oil leases? A. From those books, from the information we got from Mr. Costello, from the reports that Mr. Costello received; we were able to calculate the cost and the operating expenses in the income.

Q. I am talking, Mr. Wolf, about the item, "Dry hole abandoned." A. Yes.

Q. There is no operation in that; that represents the initial cost of the investment, does it not? A. That represents his contribution towards the operation which resulted in a dry hole. They were abandoned.

Q. Leasehold cost, is that right? A. It is charged as a leasehold cost, yes.

Q. And you obtained that information from the books of Palino, is that right? A. Well, I am not quite sure whether we obtained it all, but, at any rate, with the information furnished by Mr. Palino, the accountant, from his books, and from the reports, and (1276) from the information that we got from Mr. Costello, we were able to ascertain that, and also upon communication too with some of these operating companies.

Q. After you had looked at Palino's books did you confirm the cost of these leaseholds with Mr. Costello? A. Yes.

Q. What did you confirm with respect to the cost of the C. R. Hahman Morris lease in Weiss County, Texas, made in 1949? A. A thousand dollars.

Q. What with respect to the E. T. Collie lease, Jack County, Texas, made in 1949? A. $4,000.

(Four checks marked Government's Exhibit 304 for identification; three checks marked Government's Exhibit 305 for identification.)

Q. I show you Government's Exhibit 304 for identification, which consists of four checks, and I ask you if those are the checks reflecting the payments by George Morton Levy to Frank Costello, which you have testified about? A. Well, I would know about the first check.

Q. Would you look at the endorsement? A. I would know about the first check. That is Mr. Costello's endorsement, I am quite sure. That is the $30,000 check.

Q. And it is dated November 14, 1947, is that right?

(1277) Q. In the amount of $30,000? A. That is right.

Q. G. M. Levy to Frank Costello, endorsed by Frank Costello? A. That is right.

Q. Second one, November 5, 1948? A. I have never seen that.

Q. $7,500.

Mr. Fennelly: I object to him reading them. They aren't in evidence. The testimony—

Q. Do you recognize the endorsement?

The Court: Sustained.

Q. Do you recognize the endorsement?

The Court: Oh, yes, you may answer that.

A. Yes.

The Court: There is no objection to that.

A. (Continuing) Yes, Mr. Costello's—oh, hold it.

Mr. Fennelly: I object to whose it is.

The Court: All right; come on.

A. —I think it is.

Q. And the other two checks, are those Mr. Costello's endorsements? A. Well, now I am not sure.

Q. Which one are you not sure of? A. I am not sure of any of them now. Let me see Mr. Costello's signature on the—yes.

Q. All four of them are his signature? A. Yes.

Q. I show you Government's Exhibit 305 for (1278) identification, which consists of three checks from the Cities Service Oil Company to Frank Costello, is that right? A. These three checks appear to be three checks of Cities Service Oil Company to Frank Costello.

Q. Do you recognize the endorsements on the backs of those checks? A. They look like the endorsement of Mr. Costello.

Q. Do you recognize that as his endorsement? A. I would think so.

Mr. MacMahon: At this time the Government offers Exhibit 304 for identification and 305 for identification.

The Court: All right; we will take our recess in the meantime while counsel are looking at it.

(Jury retires.)

(Short recess.)

(1279) Mr. MacMahon: We have an offer of Government's Exhibits 304 and 305 for identification pending.

The Court: Yes.

Mr. Fennelly: No objection, your Honor; I think the Exhibit 304, the checks of Levy are repetitious. They have been testified to; they appear in the income tax return.

The Court: Well, all right, I will allow them.

(Government's Exhibits 304 and 305 for identification received in evidence.)

Q. Mr. Wolf, I refer you to Government's Exhibit 283 in evidence and call your attention to the thousand dollar interest payment made, according to this letter, on November 8, 1947—

The Court: What is the exhibit number?

Mr. MacMahon: Government's Exhibit 283, a thousand dollar interest payment to Frank Erickson.

Q. I refer you to Government's Exhibit 3 for identification, the 1947 income tax return of Frank and Loretta Costello, and I refer you to the item "Interest on loan $1000." Is that the interest paid to Frank Erickson? A. That is right.

Q. In Government's Exhibit 283? A. That is right.

Q. Mr. Wolf, I call your attention to Government's Exhibit 285 in evidence and to the thousand dollar interest (1280) payment made to Frank Erickson on August 30,

1948, and I refer you to Government's Exhibit 2 in evidence, the 1948 income tax return of Frank and Loretta B. Costello, and I call your attention to the item "Interest on loans $1856.63," and is the thousand dollar payment— A. Included.

Q. Included in that? A. Yes.

Q. And is, also, the $856.63 payment? A. Referred to in Exhibit 286 is also included.

Q. And the payment is November 4, 1948? A. November 4, 1948.

Q. Those two items make up the interest claimed as a deduction on the 1948 income tax return? A. That is right.

Q. Now I refer you to Government's Exhibit 288 for identification and 289 for identification, 288 being a letter dated September 13th enclosing a check for a thousand dollars to Frank Erickson, September 13, '49, and Government's Exhibit 289 being a letter dated November 8, 1949 enclosing a check for $247.12 payable to Frank Erickson, and I as you if the total of those two items is shown on the 1949 income tax return, Government's Exhibit 1? A. It does appear there as an interest item.

Q. And the total amount? A. $1247.12.

Q. Mr. Wolf, I refer you to Government's Exhibit 2, (1281) the income tax return of Frank and Loretta B. Costello for the year 1948, and I call your attention to the item at line 3 labelled "Miscellaneous Income, $9500." From whom did you receive the information concerning that item? A. Mr. Costello.

Q In what form did you receive it? A. When he prepared his income tax return at the office he gave the information concerning it.

Q. Did he give it to you orally? A. Orally.

Q. Did he have anything in his hand? A. Yes.

Q. What? A. Slip.

Q. Slip of paper? A. Yes.

Q. Did he leave that with you? A. No. He read from it.

Q. Now, Mr. Wolf, I refer you to Government's Exhibit 1 which is the federal income tax return of Frank and Loretta Costello for the year 1949, and I call your attention to an item on page 2, line 1, "Miscellaneous Income, $16,300." Did you get the information for that amount in the same way? A. The same way.

Q. Were you shown any other books or records with respect to that miscellaneous income? A. No.

Q. Now, except as you have testified, Mr. Wolf, for the years 1946 through 1949 were you shown any other books or records for the information and figures disclosed on the income tax returns of Frank and Loretta Costello (1282) for those years? A. Yes.

Q. Except as you have testified? A. Yes, there was additional records as to income of Mr. and Mrs. Costello.

Q. What were those? Bank statements? A. No. I have reference to a piece of property that Mrs. Costello had, Sands Point. The information as to the interest and the taxes as to that piece of property came from information that Mrs. Costello gave, plus statements that she had received from a Title Guaranty & Trust Company, I think it was, that handled the payments for her.

Q. Mr. Wolf, prior to December 8, 1950, did you have a conversation with Frank Costello concerning the income of his wife and himself for the years 1937 through 1949? A. 1950?

Q. Shortly prior to December 8, 1950. A. Yes.

Q. What did he state to you with respect to his wife's income for the years 1937, 1938, 1939, 1940, 1941, 1942 and 1943? A. May I look at the letter, letter that I wrote in connection with that?

There is no objection to this on the ground of privilege?

The Court: Have you heard any?

(1283) The Witness: No. I want to know.

The Court: You may answer the question, Mr. Wolf.

A. None for 1937. None for 1938. None for 1939. None for 1940. None for 1941. I am skipping '42 because I had no memorandum respecting '42. None for 1943. Now as to 1944, '5, '6, information that I got respecting that came from the return showing—

Q. Did he tell you that the income for those years '45— A. '44.

Q. —'44, '45 and '46 was as shown on the federal income tax returns filed in that year? A. He said there was no other income except disclosed in the income tax returns, as to that—

Q. Did he— A. Do you want me to give that? It came from the income tax returns. None for 1947. None for 1948. None for 1949.

The Court: When you say "None," you mean—

The Witness: No income.

The Court: —that the defendant said to you he had no income?

Mr. MacMahon: No, his wife had none.

The Court: That his wife had.

The last years were what? '47 and '48?

The Witness: And '9.

(1284) Mr. MacMahon: And '49.

The Court: '49.

Q. Mr. Wolf, then, the defendant said that in '37, '38, '39, '40 and '41 and '43 his wife had no income, is that correct? A. I asked him if there was any income for those years, at my office and he told me no.

Q. And none for the years 1947, 1948 and 1949? A. You didn't include '42.

Q. I know I didn't; I skipped that. A. None for '47, '48 and '49.

Q. And none other than as shown on the income tax returns in the years 1944, 1945 and 1946? A. Right.

Q. Except as shown on her income tax returns for those years? A. That is right.

Q. Now, Mr. Wolf, as to the fees that you received from October 1943 through December 31, 1949, did you receive all of those fees from Frank Costello? A. No.

Q. And one from Mrs. Costello? A. No.

Q. And all you were shown with respect to the miscellaneous items referred to in the 1948 and 1949 income tax returns were slips of paper Mr. Costello held in his hand.

Mr. Fennelly: I object; it is repetitious, your Honor.

(1285) The Court: Yes, it is. Sustained.

Mr. MacMahon: Your witness, Mr. Fennelly.

Cross Examination by Mr. Fennelly:

Q. Mr. Wolf, how long have you been a member of the Bar of the State of New York? A. 43 years.

Q. And, the prosecutor asked you when was it you saw Mr. Costello last. Now I ask you, when did you last see Mr. MacMahon last? A. You mean outside of this courtroom appearance?

Q. Outside of the courtroom. A. I saw Mr. MacMahon, I think, Saturday, I think Saturday.

Mr. MacMahon: That is right.

Q. You mean, down here in the building? A. At his office.

Q. You worked with him going over your testimony? A. I went there, Mr.—

Q. At his request, voluntarily? A. Yes, I went there, and voluntarily, too.

Q. How many times before have you been down in Mr. MacMahon's office? A. I think twice or three times; I am not too sure.

Q. Were you down there Good Friday? A. I don't think so.

Q. Holy Saturday, the day before Easter? A. Around that time. I am not—I can't now fix it. (1286) Within the last two weeks I was there.

Q. You did this voluntarily, and Mr. Costello never objected to your going down and talking to him, did he? A. Yes, I informed you and Mr. Costello of the fact that I had an appointment and—

The Court: Keep your voice up, will you, please.

A. I informed both you and Mr. Costello that I had an appointment with Mr. MacMahon, and, Mr. MacMahon, to go over the various matters and transactions that I had handled for Mr. Costello, and I wanted to know from you whether or not, apart from any question of privileges, you would have or Mr. Costello would have any objection to it. And you both said—

Q. And you heard none? A. You said "None."

Q. Now let me take up some of these charitable accounts.

Mr. Fennelly: Will you mark these? I suggest they might be marked with a letter and perhaps a numeral after it.

The Court: Are there a series of them?

The Clerk: Yes. The next defendant's exhibit is PP.

The Court: PP, sub 1, sub 2.

(Marked Defendant's Exhibits PP, PP-1 through PP-8 for identification.)

(1287) Q. Now, you worked with Mr. Costello in handling these charitable drives of his, did you not? A. Yes.

Q. And was Mr. Costello requested to conduct a drive on behalf of the Salvation Army?

Mr. MacMahon: Your Honor, I object to the question; it has no materiality to any issue in this case.

The Court: I will allow it.

A. Yes.

Q. And did you see this letter, Defendant's Exhibit PP for identification? A. Yes.

Q. And is that a letter from Walter Hoving? A. Yes.

Q. And Walter Hoving was the head of one of the large department stores in the City of New York at one time? A. Yes.

Mr. Fennelly: I offer it in evidence.

Mr. MacMahon: Your Honor, may we approach the bench on this?

The Court: Yes.

(Conference at the bench between Court and counsel off the record.)

Mr. MacMahon: The Government objects, your Honor, to Defendant's Exhibit PP for identification, on the ground that it is irrelevant, that it is hearsay, and (1288) that it is immaterial.

The Court: In the light of the examination of the witness now on the stand with respect to the matter

of collections for charitable drives, I disagree with you, Mr. MacMahon, I think that makes it relevant and material, and I overrule the objection.

(Defendant's Exhibit PP for identification received in evidence.)

Mr. Fennelly: This is a letter on the letterhead of Hoving Corporation, 30 Rockefeller Plaza—

The Witness: Pardon me, Mr.—that is the photostat you have.

Mr. Fennelly: That's right.

(Mr. Fennelly read Defendant's Exhibit PP to the jury.)

Q. I show you Defendant's Exhibit PP-1 for identification. And, did you receive that letter from Mr. Costello? A. Yes.

Mr. Fennelly: I offer it in evidence.

A. I received the original, of which this is a photostat.

Mr. Fennelly: I offer it in evidence.

Mr. MacMahon: The same objection, your Honor.

The Court: The same ruling.

(1289) (Defendant's Exhibit PP-1 for identification received in evidence.)

(Mr. Fennelly read Defendant's Exhibit PP-1 to the jury.)

Q. And did you receive, yourself, this letter addressed to you, Defendant's Exhibit PP-2 for identification? A. I

received the original, of which this is a photostat copy, after I had been in touch with Mr. France.

Mr. Fennelly: I offer it in evidence.

(1290) Mr. MacMahon: I object to this, your Honor, on the ground that it is secondary evidence. It is plainly hearsay. It is not relevant or material or competent to any issue in this case.

The Court: Let me see it.

(Paper handed to the Court.)

The Court: Overruled.

Mr. MacMahon: Your Honor, it isn't an original. It is a blocked out photostat.

Q. Mr. Wolf, have you the original of this letter? A. Yes.

Q. In your file? A. The original is not complete.

Q. May I have it? A. I cut out the insignia of the Salvation Army so that I could use it to put into—to have a plate made for a program, but otherwise that is the original letter.

Q. Can you take it out of your file? We will use that.

Mr. Fennelly: Although I think a photostat, your Honor, is as competent as an original letter.

A. Here (handing paper to Mr. Fennelly).

Mr. MacMahon: May I compare it, Mr. Fennelly, to see if this is a copy?

(Mr. Fennelly handing paper to Mr. MacMahon.)

The Court: You may substitute a photostat, if (1291) you wish, for the original.

Mr. MacMahon: I withdraw the objection on the ground of secondary evidence, your Honor.

The Court: Very well.

(Defendant's Exhibit PP for identification received in evidence.)

Mr. Fennelly: This is a letterhead on the letterhead of the Salvation Army, November 9, 1948.

"My Dear Mr. Wolf."

(Defendant's Exhibit PP-2 in evidence read to the jury.)

Q. Now, the lists of approximately 200 names combined in Irving House and— A. Irvington. Irvington House.

Q. Letter says "Irving House." Is it Irvington House? A. Irvington House.

Q. And Legal Aid group, were they names that Mr. Costello had been soliciting for those charities, too? A. Those were names that Mr. Costello had been soliciting in connection with drives to raise funds for the Legal Aid Society and Irvington House since 1944.

Q. You made it clear, did you not, to the Salvation Army that what Mr. Costello was doing was soliciting funds from other people for them?

(1292) Mr. MacMahon: I object to the form of the question.

The Court: Sustained.

Mr. MacMahon: If Mr. Fennelly would like to testify, let him take the stand.

Mr. Fennelly: Be glad to.

George Wolf—for Government—Preliminary Cross

Q. I show you Defendant's Exhibit PP-3 for identification and ask you whether or not that was a letter the original of which was sent to Mr. Hoving by Mr. Costello? A. Yes.

Mr. Fennelly: I offer it in evidence.

Mr. MacMahon: May I examine preliminarily on this?

The Court: Yes.

Preliminary Cross Examination by Mr. MacMahon:

Q. Mr. Wolf, did you have anything to do with the preparation of this letter, Defendant's Exhibit PP?

The Court: What is the sub-number?

Mr. MacMahon: PP-3, your Honor.

A. Yes.

Q. It was prepared in your office, wasn't it? A. Yes.

Q. Who wrote it, Mr. Wolf? A. Sir?

Q. Who wrote the letter? A. I wrote it. Mr. Costello was with me at the time. And it is my (1293) language.

Mr. MacMahon: No objection, your Honor.

By Mr. Fennelly:

Q. Mr. Costello signed it, the original? A. I am not sure. I am not sure.

(Defendant's Exhibit PP-3 for identification received in evidence.)

Mr. Fennelly: A letter addressed to Walter Hoving, January 11, 1949.

(During the reading of Defendant's Exhibit PP-3 in evidence to the jury the following occurred:)

Mr. Fennelly: And it gives a list of contributors totaling $10,000.

(Mr. Fennelly concluded reading the exhibit to the jury.)

Mr. MacMahon: May I read the rest of the list?

Mr. Fennelly: I will read it for you.

(Mr. Fennelly read list contained in Exhibit PP-3 in evidence.)

Q. And is this, Exhibit PP-6, the booklet of the dinner and also the card for the dinner? A. That exhibit consists of the invitation to the dinner and a note in which the contributions were (1294) solicited, a printed note in which the—I am wrong. It's a—

The Court: Well, it is an invitation to the dinner and a solicitation for assistance.

The Witness: And the return, the reply of the solicited person, to give the names of those who attended, and the program.

Mr. Fennelly: I offer it.

Mr. MacMahon: May I examine him preliminarily about this?

The Court: Yes, but in the interest of time, what is the relevance of this?

Mr. MacMahon: Has no relevance.

The Court: Or materiality?

Mr. Fennelly, I don't see any materiality to it. You have established the circumstances under which

the funds were raised. I think that is sufficient. I don't think we need to burden the record with this.

Mr. Fennelly: All right.

Mr. MacMahon: I see no materiality.

The Court: I sustained the objection.

Q. And was this letter, Exhibit PP-4, received from Mr. Hoving? A. Yes.

Mr. Fennelly: I offer it in evidence.

Mr. MacMahon: Same objection, your Honor.

(1295) The Court: Is that the letter of Mr. Hoving to the defendant?

Mr. MacMahon: Yes.

The Court: Concerning the results of this affair?

Mr. Fennelly: Thanking him for his—

The Court: Yes. Overruled.

(Defendant's Exhibit PP-4 for identification received in evidence.)

The Court: May I see those other exhibits? I am just trying to save time. The others that you haven't offered but you have had marked.

(Papers handed to the Court.)

Mr. Fennelly: This letter is dated January 14, 1949, on the letterhead of the Hoving Corporation.

"Dear Mr. Costello."

(Defendant's Exhibit PP-4 in evidence read to the jury.)

By Mr. Fennelly:

Q. And then, Mr. Wolf, is this a letter, Exhibit PP-5, for the official receipt of the Salvation Army for the Frank Costello Special Charities Fund for $6,500? A. Yes.

Mr. Fennelly: I offer it in evidence.

Mr. MacMahon: Same objection, your Honor. (1296) It comes a little late with the question.

The Court: I didn't hear what you said.

Mr. MacMahon: I say that I make the same objection to it, and I may further add that it has now reached the point where it is cumulative, all of this, and repetitious,

The Court: Overruled.

(Defendant's Exhibit PP-5 for identification received in evidence.)

Q. Mr. Wolf, how much was the bill at the Copacabana that Mr. Costello paid personally? Let me show you Exhibit PP-8 for identification to refresh your recollection. A. $2,199.05.

Q. Tell me what was the date of that? A. January—the bill is dated January 26, 1949.

Mr. Fennelly: Could I look at the income tax return of Mr. Costello for 1949?

Q. Mr. Wolf, did you take that off as a deduction on Mr.— A. No.

Q. Did you forget to? A. Well, it was overlooked.

Q. So is it fair to say that you did not spend your time trying to find deductions for Mr. Costello's income tax returns?

(1297) Mr. MacMahon: I object to the form of the question.

The Court: Sustained.

Q. But it is a fact that you did not take this deduction off of two thousand—how many dollars?

Mr. MacMahon: I object to it.

The Court: Sustained. That has been answered. And now it is 4.30.

We will adjourn until tomorrow morning.

(To the jury) Ladies and gentlemen of the jury, the Bailiff told me that you are desirous of getting probably a little more expeditious service on the elevators, but that is a problem that all of us who work here have been suffering under for a great many years. We just don't have enough elevator capacity for the number of people that are in the Courthouse. And while I should be happy to be able to accommodate you, I am afraid it is not feasible to do so.

All the jurors who serve on all the cases find the same trouble, and the lawyers and witnesses and everybody else. So, please be patient with us.

Meantime, don't talk about the case, and keep your minds completely open until all the evidence is in, and we will see you, I hope, at 10.30 in the morning.

(Adjourned to April 28, 1954, at 10.30 a.m.)

(1298) New York, April 28, 1954;
10.30 o'clock a.m.

Trial resumed.

(Jury not present.)

The Clerk: If there are any witnesses present in the courtroom at this time, they will please retire to the witness room.

Mr. MacMahon: Your Honor, this has to do with the interrogatories which have been sent to Frank Erickson pursuant to court order.

Last night, at the close of court, Mr. Fennelly advised me that he was going to withdraw those interrogatories.

And I submit to the Court that those are being taken pursuant to a court order, and I ask the Court to direct Mr. Fennelly, Mr. Delaney and the defendant not to interfere with the taking of those interrogatories.

Mr. Fennelly: I intend to go before Judge Goddard and ask him to vacate the order; that I no longer need the interrogatories because the proof has been made through Mr. Wolf that I sought in the interrogatories. I did not know whether the Government was going to bring it out in their case and, therefore, as a precaution I (1299) had had the interrogatories prepared. They are no longer necessary.

The Court: Very well. You may make your application before Judge Goddard.

Mr. MacMahon: Your Honor, I submit this matter is on trial before you and that you are much more familiar with it than Judge Goddard is.

The Court: I don't know how familiar Judge Goddard is with it, but if he is not more familiar with it than I am, he is not very well informed because all I know is that there has been some discussion before me about interrogatories.

There is no sense suggesting that I know anything about the interrogatories or the purpose for which they were sought, or the information which they seek to elicit, but it does seem to me that if a party undertakes to arrange to get proof and then at any time before offering the proof at the trial determines that he doesn't want the proof he has a right not to proceed with getting it.

I haven't looked up the law on it but it seems to me that is just common sense. However, the order pursuant to which these interrogatories were to be taken was made by Judge Goddard. Presumably he heard the arguments of Mr. Fennelly and the Government as to why (1300) they should be taken and what should be taken and so on, and the defendant is perfectly at liberty to proceed to Judge Goddard to ask Judge Goddard to vacate the order he made. There is nothing else, it seems to me, for me to do in the premises. I cannot compel Mr. Fennelly to take the interrogatories if he doesn't want to.

Mr. MacMahon: They are already in the mail, your Honor.

The Court: Very well.

Mr. MacMahon: Pursuant to a court order.

Mr. Fennelly: Even if they were taken, they couldn't use them unless I used them.

The Court: He wants to apply to Judge Goddard to vacate that order, and he says he has grounds he thinks will persuade Judge Goddard to grant his request. I cannot prevent him from doing that. By the same token, there isn't anything to prevent you from taking any interrogatories that you desire to take.

Mr. MacMahon: The rules prevent the Government from doing it.

The Court: What's that?

Mr. MacMahon: There are no rules which permit the Government to take depositions either by interrogatories or otherwise, and cross-interrogatories have been served in (1301) this case pursuant to the order.

The Court: There isn't anything to stop the Government from bringing Mr. Erickson here to testify either.

Mr. Fennelly: On a writ.

The Court: What is the sense of talking about it? Some of us are older than others, but all of us are old enough to know the score. Let us stop fooling and get along.

All right, bring in the jury.

(Jury in box.)

The Court: All right. Do you desire to proceed with the examination of the last witness, Mr. Fennelly?

Mr. Fennelly: Yes, your Honor.

The Court: Will you take the stand, please, Mr. Witness.

GEORGE WOLF, resumed.

Cross Examination by Mr. Fennelly (Continued):

Q. Mr. Wolf, you did not testify before the grand jury that returned the indictment in this case? A. What is that? May I have that read?

The Court: You may.

(Question read.)

A. No.

(1302) Q. Now Exhibit PP for identification is the statement of the Copacabana for the Salvation Army Drive that Mr. Costello paid for. Have you the check with you showing the payment of that bill? A. I had the check. I have not the check.

Q. Well, do you know where it is? A. Yes.

Q. Where? A. At the request of—

The Court: Oh, tell us where it is, Mr. Wolf.

The Witness: It is with a special agent.

The Court: All right. It is with some employee of the United States Government.

The Witness: Special agent of the Treasury Department.

The Court: Very well.

Mr. Fennelly: Now would the Government please produce that check?

Mr. MacMahon: It will take a couple of minutes.

Q. Now, while that is being looked for, Mr. Wolf, the $6500 from the sale of tickets, that was deposited in cash, was it not, into the account of Mr. Costello's Charity—what was the name of it? A. Frank Costello's Special Charities Account.

Mr. Fennelly: And could I have that exhibit, please?

Mr. Pierpoint: What exhibit do you refer to?

(1303) The Court: Which exhibit is it you are asking for?

George Wolf—for Government—Cross

Mr. Fennelly: Mr. Costello's charity fund account. I will give you the number in a minute. I forget it offhand.

106, I think you will find it to be.

(Mr. Seymour hands to Mr. Fennelly.)

Mr. Fennelly: No. It was the account before that one.

Mr. Seymour: 90-C (handing)?

Q. I show you Government's Exhibit 90-C, which is the Frank Costello special charity fund account, Chemical Bank, and call your attention to an item of deposit of $6500. That is the item, is it not? A. Yes.

Q. And a withdrawal of $6500? A. Yes.

Q. That is the payment to the Salvation Army of that cash that was deposited in the account, isn't it? A. Yes.

Mr. Fennelly: Have we got that check?

Mr. MacMahon: We haven't located it.

The Court: The check for $6500?

Mr. Fennelly: No. I wanted the check for $2199.05, the Copacabana, in paying the bill.

The Court: Well, do you need any further proof (1304) on that? The witness has testified that it was paid, that it was not deducted as a contribution on the income tax return for that year. It seems to me you have enough proof in on that. I wish you would move along.

Q. Will you tell me how long ago you turned this check over to the special agent of the Internal Revenue Bureau?

Mr. MacMahon: Your Honor, I object to it as immaterial.

The Court: Sustained.

Q. Did you turn additional papers over to the Revenue Bureau?

Mr. MacMahon: I object to that, your Honor, as immaterial.

The Court: Sustained.

Mr. Fennelly: Your Honor, I am going to need them in the course of my examination.

The Court: That may very well be, and when you call for them I anticipate that they will be produced and you will have something to say about them. But as of now I direct you to move along.

Mr. Fennelly: Would you mark those as one exhibit, with numbers.

(Marked Defendant's Exhibit QQ, QQ-1 and QQ-2 for identification.)

(1305) Q. Now I show you Defendant's Exhibit QQ for identification and ask you whether or not that is a letter that Mr. Costello wrote to the Legal Aid Society in 1946? A. This is the letter that he sent to the Legal Aid Society. Q. That is a copy of the letter? A. Copy of the letter.

The Court: You distinguish between writing and sending. You were asked if he wrote it and you said he sent it. Are you suggesting that somebody else wrote it for his signature and thereafter he authorized its dispatch?

The Witness: It was dictated in my office; prepared in my office, and he might have signed it, probably did. And that is what I meant.

The Court: Very well.

George Wolf—for Government—Cross

Q. Did you aid Mr. Costello in the drive for funds for the Legal Aid Society? A. Yes.

Mr. MacMahon: Your Honor, I object to this question.

The Court: I don't see its relevance. But are you going to offer those, Mr. Fennelly?

Mr. Fennelly: Yes, your Honor.

(1306) The Court: Well, what is the purpose of this? Here again—now, just a minute. Here again, I allowed considerable latitude yesterday in view of the nature of the examination, and it has been established that these various services were rendered by the defendant to various organizations that were seeking funds from the public and that he had some success in his efforts to collect the funds and turned them over, and that whatever he collected went through certain accounts and those accounts are all in evidence now, but it seems to me we are just burdening the record with all of these letters.

Mr. Fennelly: No, your Honor. We have shown so far the Salvation Army Drive. Mr. MacMahon among his last questions to Mr. Wolf, asked a question if it was not the fact that some 19,000 odd dollars which Mr. Costello, he said in his question, had contributed in his name was in fact other people's money.

Now I have a right, I should think, to show that that is not so, that the people to whom Mr. Costello gave the money, for instance, that Legal Aid Society, knew that Mr. Costello was conducting a drive and he was turning over other people's money and he never turned it over under any representation that it was his money.

The Court: Hasn't that been established already?

Mr. Fennelly: It has not been established in (1307) connection with the Legal Aid; it has been established definitely in connection with the Salvation Army.

The Court: Well, maybe you are right. I will allow you to establish it, if you say that is so. I was under the impression that that had already been established in the record.

Mr. Fennelly: No, I think not.

The Court: It seemed to me yesterday in the examination of Mr. Wolf, it appeared perfectly clear that some of the money which was raised was raised in the way you suggested, but your point is that there was some confusion as to the description of the representation under which it was finally paid over, which may have something to do with it. I will allow you to develop that.

Mr. MacMahon: I think the Government should state its position on this. These funds were commingled in these accounts, and in our investigation we discovered these contributions in Costello's name and it was, therefore, necessary to segregate out these funds which had been commingled so that Costello would not be charged with greater amounts of money in these bank accounts than were in fact his funds.

The Court: I think that was cleared up yesterday, but Mr. Fennelly's point is that in the light of certain questions (1308) which you asked at the end of your examination of Mr. Wolf that they were susceptible of leaving in the jury's mind certain impressions from which arguments might be offered; and so that he may lay the basis for argument to the contrary; in the light of the examination, I will

permit him to go ahead and do what he is doing now.

Q. And attached to Exhibit QQ for identification—is that a letter received from the Legal Aid Society, to Mr. Costello? A. Yes.

Mr. Fennelly: I offer them in evidence.

The Court: Of course, since everybody has made these statements about their positions, I think it is appropriate to point out to the jury that the issue in this case is not whether Mr. Costello did or did not raise funds or whether he did or did not contribute funds. The only issue in this case is whether, in the years 1946, 1947, 1948 and 1949, as charged by the Government, he wilfully attempted to evade taxes which were due on income which he had.

Mr. MacMahon: No objection, your Honor.

(Defendant's Exhibit QQ for identification received in evidence.)

Mr. Fennelly: The first is a letter from Mr. Costello to the Legal Aid Society, October 28, 1946, (1309) attention of Mr. Whitney N. Seymour, president.

Q. That is not this Mr. Whitney Seymour? It is his father, is that right? A. That is right.

(Mr. Fennelly read the exhibit to the jury.)

Mr. Fennelly: And the next is a receipt from the Society for the money, and thereafter is a letter from the Legal Aid Society, October 31, 1946, to Mr. Costello.

(Exhibit read to the jury.)

Q. Then, Mr. Wolf, were these two letters received in connection with the Legal Aid drive? A. Yes.

Mr. Fennelly: I offer them in evidence. I offer Exhibits QQ-1 and QQ-2 for identification.

Mr. MacMahon: Your Honor, I object to them on the ground of irrelevance and they are cumulative of what has already gone in.

The Court: Let me see the QQ series.

(Papers handed to the Court.)

Mr. Fennelly: I may say, your Honor, they are obviously not cumulative but the beginning of drives which Mr. Costello thereafter conducted.

The Court: Here are the QQ exhibits (handing papers to the clerk).

The only one of these letters, Mr. Fennelly, that I see that lends any support to the proposition for which (1310) you say you desire to offer these letters is RR-3 for identification. Bear in mind that what you said was that you wanted to meet that part of the questions, or the implications of the questions which, in your opinion, suggested that Mr. Costello was misrepresenting money he collected from others was actually his own.

All these requests and these encomia, I think, are of no relevancy or materiality at all here, but anything that tends to show what is the fact, that Mr. Costello actually used his own efforts to get other people to contribute, you may show. The rest of it, I think, we will have to let out because we just don't have time for it.

Mr. Fennelly: How about QQ?

The Court: RR-3, it seems to me, is the only letter that has any bearing on that point at all. That tends to show that it was known by these people that he was actually going out and successfully soliciting other people for funds for the Legal Aid.

Mr. Fennelly: QQ-1?

The Court: QQ is not in it.

Mr. Fennelly: I haven't offered—

The Court: Oh, I thought you had offered those.

Mr. Fennelly: Not QQ-1 and 2. I haven't yet offered.

(1311) The Court: No, I don't think either one. I will sustain the objection to both of them.

Mr. Fennelly: I offer QQ-1 and 2 in evidence.

The Court: Those are the ones you just objected to, weren't they?

Mr. Fennelly: Your Honor is sustaining the objection?

The Court: And I sustain the objection, yes.

Mr. MacMahon: Your Honor, may the record note that at this time we hand Mr. Fennelly the Copacabana check for $2199.05, which he requested earlier.

Mr. Fennelly: Mark that.

(Marked Defendant's Exhibit SS for identification.)

The Clerk: I forgot to announce the marking of Defendant's Exhibits RR for identification through RR-3 for identification, which you asked me to mark.

Mr. Fennelly: I offer Defendant's Exhibits SS for identification and PP-8.

Mr. MacMahon: No objection to SS.

George Wolf—for Government—Cross

(Defendant's Exhibit SS for identification received in evidence.)

Mr. McMahon: No objection.

(Marked Defendant's Exhibit PP-8 for identification, received in evidence.)

(1312) Q. Mr. Wolf, Defendant's Exhibit SS is the check of Mr. Costello—

The Court: No. That is the third or fourth time. It is in evidence. If you want to show it to the jury or read it, you may do so, but we don't need quite so much production.

Mr. Fennelly: I was doing it for the purpose of the record, that's all.

The Court: Perfectly clear: you offered it, it is in evidence, and you may read it.

Q. I show you Defendant's Exhibit RR-3 for identification. Was that letter prepared and sent in connection with the Legal Aid Society Drive? A. Yes.

Mr. Fennelly: I offer it in evidence.

Mr. MacMahon: Objected to on the ground that it is irrelevant and cumulative.

The Court: That is the one I looked at before, isn't it?

Yes, all right.

Mr. Fennelly: Letter of October—excuse me, you haven't marked it.

The Court: The objection was overruled. It may be admitted in evidence. And please mark it, Mr. Clerk, so it may be read and we may move along.

(1313). (Defendant's Exhibit RR-3 for identification received in evidence.)

Mr. Fennelly: Letter of Mr. Costello to Mr. William B. Gibbon, Jr., 230 Park Avenue, October 29, 1947.

(Exhibit read to the jury.)

Mr. Fennelly: Did your Honor sustain objection to—I guess, perhaps, I haven't offered them. I offer RR, RR-1, RR-2 for identification.

The Court: The one that was just received was RR-3, was it not?

The Clerk: Yes, sir.

Mr. MacMahon: We object to RR-1 and RR-2, on the grounds, your Honor, they are irrelevant, they are hearsay, and they are cumulative.

The Court: Yes. These are the ones I just looked at a few minutes ago. I sustain the objection.

Mr. Fennelly: Mark those as one exhibit with numbers.

(Marked Defendant's Exhibits TT, TT-1 through TT-7 for identification.)

Mr. Fennelly: Has the Court seen these?

The Court: No, I have not.

(Mr. Fennelly hands exhibits to the Court.)

Mr. Fennelly: Will you mark these (handing to (1314) clerk).

The Court: In the interest of saving time, I will announce now that, on the assumption that you

intend to offer all of these exhibits, Mr. Fennelly, and this is done merely for the purpose of expedition, TT-5 for identification, TT-6 for identification and TT-7 for identification will not be received; and if objection is made I will sustain it; and if no objection is made I will exclude them of my own, in order to save time and cut down the size of the record.

With respect to the other exhibits, TT-1, TT-2, TT-3, TT-4 and TT, all for identification, if offered, will be accepted. I think they are material on the issue of whether or not the funds which the defendant claims to have raised were his own funds or whether they were actually funds solicited from others.

Mr. MacMahon: Your Honor, I suggest that there is no issue of that whatever. The only issue—

The Court: I am well aware of that, Mr. MacMahon, and I have repeatedly stated, as I did a few minutes ago, to the jury, that it was not an issue. But there was a suggestion left in the questioning last night which I think the defendant is entitled to rebut by such evidence as is available. Now, if I am wrong on that I am sorry, but I am trying to do the best I can to (1315) give everybody a fair trial without error here, and I am trying to do it as expeditiously and as proper regard for the rights of everybody will allow. I have ruled. And let us get ahead.

Q. I show you Defendant's Exhibits TT-1, 2, 3 and 4 and ask you whether those are the letters in connection with the Legal Aid Drive received by Mr. Costello, or sent by him? A. Yes.

Mr. Fennelly: I offer them in evidence.

Mr. MacMahon: No objection.

(Defendant's Exhibits TT, TT-1 through 4 for identification received in evidence.)

Mr. Fennelly: TT is a letter from American Brakeshoe Company, office of the president, January 19, 1948 (reads to jury).

TT-1 is a letter on the letterhead of American Brakeshoe, office of the president, January 20, 1948 (reads to jury).

TT-2 is a letter on the letterhead of American Brakeshoe Company, office of the president, January 26, 1948 (reads to jury).

TT-3, a letter on the letterhead of American Brakeshoe Company, office of the president, January 30, 1948 (reads to jury).

(1316) TT-4, also a letter of American Brakeshoe Company, February 4, 1948 (reads to jury).

(Defendant's Exhibits UU, UU-1 through UU-5 marked for identification.)

The Court: Here again, having looked at this series of exhibits, I will exclude UU-1 for identification.

UU for identification, UU-2 for identification, UU-3 for identification, UU-4 for identification and UU-5 for identification if offered will be received.

Q. Mr. Wolf, I show you Defendant's Exhibits UU, UU-2, 3, 4 and 5, and ask you whether or not they are letters received in connection with the Legal Aid Society Drive?

Mr. MacMahon: Your Honor, I concede that Mr. Wolf can identify these letters, in the interest of time.

George Wolf—for Government—Cross.

The Court: Very well. You will concede that they are letters received—

Mr. MacMahon: Yes.

The Court: Very well.

Mr. Fennelly: I offer them in evidence.

Mr. MacMahon: No objection.

(Defendant's Exhibits UU, UU-2, UU-3, UU-4 and UU-5 for identification received in evidence.)

The Court: Mr. Fennelly, that UU is a rather lengthy letter. I wonder if it would be possible to (1317) summarize it.

Mr. Fennelly: I won't read it.

The Court: It is a request to the defendant to help in raising funds.

Mr. Fennelly: Yes. I won't—

The Court: And I think you might similarly summarize the balance of the letters; there were three or four different occasions where some official of the Legal Aid Society wrote to the defendant and thanked him for checks which had been forwarded.

Q. Mr. Wolf, Benjamin Buttenwieser, who wrote these letters, was the head of the Legal Aid Drive for the year 1949, was he not? A. If those were the years appearing on those letters, that is so.

Q. He is one of the partners of Kuhn, Loeb & Company? A. Yes.

Q. And these are letters thanking Mr. Costello for— A. Yes.

Q. —obtaining contributions from others in his work in the Legal Aid Drive?

Now, did Mr. Costello also conduct drives on behalf of Irvington House? A. He did.

Q. And through what years?

The Court: Well, isn't the point rather this: (1318) Not whether he conducted such drives but whether or not any of the funds in the charity drive account were raised in that way? This is not the time to review the defendant's history as a fund raiser except in so far as that relates to these two accounts that we have been discussing.

Mr. Fennelly: That is right, your Honor. My next question which I think—I have to first lay the foundation if he didn't do it and then whether the funds went into the account.

Mr. MacMahon: Your Honor, I submit—

Mr. Fennelly: I will be glad to ask him in one question if it is satisfactory.

Mr. MacMahon: I submit that this whole line is irrelevant and immaterial to any issue in this case; that the Government has not made any suggestion that he did not collect funds; it was simply that these funds were commingled under Mr. Wolf's management and had to be separated out.

Mr. Fennelly: Mr. MacMahon may not like the question that he asked last night.

The Court: Just a minute, please, Mr. Fennelly. I am interested, as I said before, in having a fair trial and a speedy one. I am not going to comment on that. That is about the fourth time you said that since yesterday afternoon, Mr. MacMahon, and each time I have (1319) tried to explain to you that I disagree with you as to the effect of some of your questions. You have a right, of course, to disagree with the Court on that, and you have made it quite

plain that you do. But since I am the one that has to determine, on the basis of what I hear, what shall come in, I have overruled you on that and I am going to allow this. But I wish it could be done, and I am sure it can be done, with more expedition than we have been achieving this morning.

You may proceed, Mr. Fennelly.

Mr. Fennelly: Would you read the question, please.

The Court: Why don't you ask him if in these charity drive accounts there were funds that were raised by the defendant from his friends or acquaintances other than those for the Legal Aid and for the Salvation Army, concerning which you have already testified?

The Witness: Yes.

The Court: Very well. All right. We will take our recess now, and in the meantime see if you can't get together with the witness and speed it up a little bit, Mr. Fennelly. All right.

(Short recess.)

(1320). (Jury present.)

By Mr. Fennelly:

Q. Mr. Wolf, on 79 Wall Street, you incorporated that company, did you not? A. Mr. Shapiro did. Another lawyer incorporated it.

Q. And he was a lawyer that you brought into the matter? A. That is right.

Q. And was he a real estate lawyer? A. Yes.

Mr. Fennelly: Could I have from the Government,

please, the corporation returns for 79 Wall Street Corporation?

Mr. MacMahon: Are you asking for the originals or for the retained copy?

Mr. Fennelly: Either one.

Mr. MacMahon: I hand you retained copies.

Mr. Fennelly: Would you mark that one?

(Marked Defendant's Exhibit VV for identification.)

Q. Mr. Wolf, is Defendant's Exhibit VV the office copy of the tax return of 79 Wall Street Corporation? A. That was the copy that was sent to our office—my office.

Q. That is for the fiscal year June 1, 1947— A. '47.

Q. —to June 1, 1948. Did you turn that over to (1321) the Government? A. Yes.

Q. I call your attention to—I think you can look at it; a staple runs through it—the fact that on the second page Mr. Costello is listed as the equitable owner of 100 per cent of the stock, is he not? A. Right.

Q. And that was so on all of the tax returns of 79 Wall Street Corporation that were filed with the Federal Government, is it not? A. I am not too sure. I would like to see 46. If 46 contains it, all of them contain it.

Q. (Handing paper to the witness.) A. Yes.

Q. And 79 Wall Street Corporation kept books of account? A. Yes.

Q. And they were regularly kept? Regular set of books? A. Complete set of books.

Q. Did you turn those over to the Government? A. Turned them over to Mr. MacMahon.

Q. The tax lien that was discussed yesterday, did Mr. Costello attempt to purchase a tax lien on a building adja

cent to the property of 79 Wall Street Corporation? A. That tax lien that I testified to yesterday—

Q. Yes, and what year was that, sir? A. I think 194—(1322) Q. '45, wasn't it? A. No. '45. '45. Latter part of '45.

Q. And the transaction did not materialize, is that correct? A. That is correct.

Q. And $9500 was returned by you to Mr. Costello in November 1945? A. That is right.

Q. Now, do I understand correctly that the salary of Mr. Costello was paid out in—for charities? A. Not altogether. In most part, yes.

Q. What I am trying to clear up: I did not quite understand yesterday, there was some interrogation about a check which was a reimbursement from the corporation to Mr. Costello of some hundred dollars? A. All those reimbursements—

Q. For a charity to which he had contributed? A. Yes. Those reimbursement checks were reimbursed to Mr. Costello for salary—for charitable contributions which he had made, and in turn those checks were charged against his salary account.

Q. That is what I mean. He was charged, against his salary account, for the amount of the hundred dollars that you testified to yesterday? A. Whatever those were.

Q. Yes. On this Erickson loan, did you obtain receipts for the payments made by Mr. Costello on the (1323) Erickson loan? A. A number of receipts were obtained for interest and principal payments.

Mr. Fennelly: Would you mark those with one letter with numbers?

The Clerk: Defendant's Exhibits WW through 5 marked for identification.

George Wolf—for Government—Cross

(Marked Defendant's Exhibits WW through WW-5 for identification.)

Q. I show you Defendant's Exhibit WW-1 through 5 and ask you whether or not those are the receipts? A. They are.

Mr. Fennelly: I offer them in evidence.

Mr. MacMahon: May I inquire preliminarily, your Honor?

The Court: Yes.

By Mr. MacMahon:

Q. Mr. Wolf, do you know where these receipts were prepared before they were signed? A. Yes.

Q. Where? A. My office.

Mr. MacMahon: No objection, your Honor.

(Defendant's Exhibits WW through WW-5 for identification received in evidence.)

By Mr. Fennelly:

Q. Now, coming to the purchase of real estate in Hollywood by Mrs. Costello, did Mrs. Costello—when was (1324) it she first spoke to you about it? A. March 15, 1948 or approximately March 15, 1948.

Q. Where was it that she spoke to you? A. In my office.

Q. Did she come alone? A. Yes

Q. Did she tell you why she wanted the property purchased in the name of the Geigermans who are her brother and sister in-law?

Mr. MacMahon: Your Honor, I object to the question as hearsay.

The Court: I am inclined to sustain that. I don't see the relevance in that—sustained—or the materiality.

Mr. Fennelly: Could I have Government's Exhibit 257-B?

Q. To your knowledge, Mr. Wolf, did there come a time when the fact that Mrs. Costello was purchasing or had purchased Florida property come to the attention of Mr. Costello? To your knowledge? A. I only recalled one discussion with Mr. Costello about that.

Q. And—

Mr. MacMahon: I object to this. It is self-serving.

(1325) The Court: Maybe it is. I don't know. I will have to wait to hear what it is. All we have now is the fact there was a discussion.

Q. Will you tell us what he said about his wife's purchasing property in Florida?

Mr. McMahon: Your Honor, I object to that.

The Court: Sustained.

Q. Government's Exhibit 257-B is a deed from Loretta B. Costello and her husband, Frank Costello, to the Penrie Corporation, dated January 25, 1950. Was the acknowledgment of that taken in your office? A. Yes. Yes.

(1326) Q. Now, title had been in Mrs. Costello's name alone, had it not? A. That is right.

Q. Just before that? A. Title had been in her name before this deed—before Exhibit 257 was executed.

Q. And she had taken a deed from the Geigermans and into her own name, is that right. A. She had taken a deed, my instructions, from the Geigermans when it was first put into the Geigerman's name but not recorded. That deed was recorded later when she had determined to sell the property.

Q. And had she originally planned to build a house—

Mr. MacMahon: Your Honor—

Q. —on the property?

Mr. MacMahon: I object to that as irrelevant.

The Court: Sustained.

Q. Will you tell us how it came about that the deed, Government's Exhibit 257-B, is also executed by Mr. Costello as well as Mrs.?

Mr. MacMahon: Your Honor, I object to that.

The Court: I will allow it. I will let him tell us if he knows.

A. I received instructions from the lawyer, Mr. Beckerman, to have Mr. Costello likewise sign it.

The Court: Was that because of some provision of the law of Florida?

(1327) The Witness: That is right. Join as her husband.

Q. As a necessary provision of Florida law? A. That is right.

Q. And Mr. Beckerman was a Florida lawyer, is that right? A. That is right.

Q. Now, you testified about payment to an administrator of the Rothstein estate of $5,000. Did Mr. Costello contest the fact of liability and of service of a summons and complaint in that matter? A. To me, yes.

Q. Now, Consolidated Teievision, there came a time when all of the money invested in that was returned, was it not?

Mr. MacMahon: Your Honor, I object unless the time is specified.

The Court: Can you specify the time?

Mr. Fennelly: Yes.

Q. Will you tell us when that was? A. Yes.

The Court: First tell us when.

The Witness: March 16, 1950.

Q. And to whom did you turn over the money that you received back from that stock? A. Less the amount of a fee that was paid to me, to Mrs. Costello.

Q. Did you have any instructions at that time to (1328) do that? A. Yes, I had a talk about it.

Q. With Mrs. Costello? A. Mrs. Costello and Mr. Costello.

Q. Now, you testified about a payment to Meteor Holding Corporation? A. Yes.

Mr. Fennelly: Could I have those exhibits for identification, those two transcripts of the judgment?

Mr. MacMahon: The ones you objected to yesterday, Mr. Fennelly?

Mr. Fennelly: That is right. Two of them, one on West End Avenue.

Mr. Delaney: 295 and 297-A.